United Nations CAC/COSP/IRG/I/4/1/Add.11

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
31 March 2015

Original: English

Implementation Review Group
Sixth session
Vienna, 1-5 June 2015
Item 2 of the provisional agenda*
Review of implementation of the United Nations Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Israel

1. Introduction: Overview of the legal and institutional framework of Israel in the context of implementation of the United Nations Convention against Corruption

The Convention was signed on 29 November 2005 and ratified by Israel on 4 February 2009. Treaties are not automatically incorporated into Israeli law upon ratification. In order for a treaty to be implemented at the national level, appropriate adjustments are often necessary. For this reason, Israel ratifies international conventions after it is has been determined by the Government that Israel's internal law is compliant. This was the case for the Convention.

Israeli legislation sets out a comprehensive legal framework for the criminalization, prevention and eradication of corrupt practices. Israel's legal framework against corruption includes provisions from its Basic Laws (a set of basic laws containing constitutional elements, as Israel does not have a formal constitution), Penal Law, Criminal Procedure Law, Protection of Employees Law, Witness Protection Law, Rights of Victims of Crime Law, Public Service Law, Prohibition on Money Laundering Law (PMLL), International Legal Assistance Law, Extradition Law, and Encouragement of Ethical Conduct in the Public Service Law.

Israel's law enforcement agencies engage in an intensive campaign to strengthen the rule of law and implement a zero tolerance approach towards corruption. The battle against corruption has been, and remains, a matter of high priority for the executive, legislative and judicial organs. Public officials and private actors engaging in corrupt practices are prosecuted without consideration of their position or identity.

Israel has a variety of agencies and authorities responsible for implementing anti-corruption measures that cooperate with each other on a daily basis. Authorities involved in the fight against corruption include the Israel Police (IP), Office of the State Attorney, Israel Money Laundering and Terror Financing Prohibition Authority, Israel Securities Authority, Office of the State Comptroller and Ombudsman, State Control Committee (Knesset), Ethics Committee (Knesset), Government Companies Authority and the Civil Service Commission.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials is comprehensively criminalized in Sections 290 and the accompanying sections of the Penal Law. The type of benefit offered — be it monetary or other — and whether it was given for an act or an omission, for suspending expediting or delaying an act, or for causing preferential or adverse treatment, are all irrelevant. In addition, the law does not differentiate between cases where the bribe was given by the person himself or through another person; whether it was given directly to the person who took it or to a third party on behalf of him, whether it was given before or after the event, and whether the ultimate beneficiary was a public official or another person. There is no need for the

bribe to have actually been received or even for consent to receive or give it to have been given, in order for a criminal offence to be completed.

The definition of a public official in Israeli law is broad and includes, among others, State employees, employees of entities wholly or partially owned by the government and the holders of offices or functions under enactments, which include judicial and legislative officers. Under Section 293(7), the bribery offence covers both cases where bribes are given for the performance of acts that fall within or outside of the duties and functions of public officials.

Section 291A of the Penal Law enacts the foreign bribery offence and includes all the acts described in article 16(1) of the United Nations Convention against Corruption. The elements of the offence are identical to those of domestic bribery, other than the purpose of the bribe and the definition of the term "foreign public official", which is in line with the definitions of the terms "foreign public official" and "official of a public international organization" in the Convention. After consideration, and due to policy concerns, it was decided not to establish as a criminal offence the passive bribery of foreign public officials.

The provisions of article 18 are implemented through various provisions of the Law that deal with criminal liability for bribery.

Israel has chosen not to extend the bribery offence to the private sector. However, private entities that provide a public service are included in the definition of "public official" for the purposes of bribery offences.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized in the PMLL. The elements of money-laundering and concealment set forth in articles 23 and 24 of the Convention against Corruption are almost all covered. Under Israeli law it is a criminal offence not only to convert and transfer prohibited property or to conceal the illicit origin of such property, but also to retain possession of or use such property in the knowledge that the property is prohibited. There are, however, restrictions regarding the definition of "prohibited property".

Regarding predicate offences Israel uses a list-approach. The offence of money-laundering applies to a wide range of predicate offences, which may be deemed as such even if committed in another State, provided that they also constitute offences under the laws of that State. A comprehensive range of corruption-related offences is included, albeit not all offences established in accordance with the Convention. The prosecution of self-laundering is possible.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Under section 390 of the Penal Law, any public official who steals an asset of the State or an asset which came into his possession by virtue of his official position is criminally liable if the value of the stolen asset exceeds 1,000 new sheqalim (approximately $264). Although the Convention establishes no minimum value, given that the value indicated is small, that provision may be regarded as complying with the relevant requirements of the Convention. Additionally, the offence of theft and some counts of theft with aggravated circumstances are not limited by a minimum value.

Section 390 states that stolen objects, i.e., the property in question, must pass into the public official's possession, which equates to such forms of theft as misappropriation. The definition of theft in Section 383 applies to Section 390. With regard to other elements of embezzlement by public officials, it is possible to apply other provisions, such as Section 284 (fraud and breach of trust).

Embezzlement in the private sector is covered by a range of offences in the Penal Law such as Deceit and Breach of Trust in Body Corporate (Section 425), Theft by an Employee (Section 391), Theft by a Director (Section 392) and Theft by an Agent (Section 393), whereby similar considerations as with embezzlement in the public sector regarding the minimum value of the stolen asset apply. As noted above, the offence of theft is not limited by a minimum value.

The abuse of functions is incriminated through sections 278, 280 and 284 PL. Section 284, in particular, does not require the obtaining of an undue advantage by the public official or for another, and any breach of the public trust without these elements is considered an offence.

Israel has considered the criminalization of illicit enrichment but decided against it, because it was felt to be contrary to the presumption of innocence as a fundamental principle of criminal law. There is a system of asset declarations for certain public officials, members of government, heads of municipal authorities and their deputies, and members of the Knesset in place, as well as a prohibition on public officials from accepting gifts presented to them in their capacity as public servants.

Obstruction of justice (art. 25)

The Penal Law has various provisions to address attempts on influencing the legal process. Sections 244 (Obstruction of justice), 245 (Subornation in connection with an investigation), 246 (Subornation of testimony), 249 (Harassment of witness), 250 (Improper influence) and 382A (Assault of a public official) are particularly relevant.

Liability of legal persons (art. 26)

According to section 23 of the Penal Law, a legal person is criminally liable for any offence when certain conditions set out in the provisions of that section are met. Corruption offences by legal persons are mainly punishable with criminal sanctions, although civil and administrative liability is also possible.

The result of criminal proceedings against either a corporation or the person who committed the offence does not prevent or influence the institution of criminal proceedings and a finding of criminal liability against the other party.

The criminal sanctions that can be imposed on a legal person for corruption offences are fines. Moreover, section 261 of the Companies Law enables the Attorney General to file for the dissolution of a company where such operates illegally.

Participation and attempt (art. 27)

Participation in the commission of corruption-related offences is covered by Sections 29 (Perpetrator), 30 (Enticement), and 31 (Accessory) of the Penal Law. Attempt is covered by Sections 25, 26 and 34D. Relevant case law provides extensive clarification on the nature and elements of attempt and its prosecution.

Since proposal is an element included in the bribery offences, and abetting is found in Section 31 of the Penal Law, and in light of the offences of provision of means for commission of felony and conspiracy, Israel has considered but decided not to further criminalize the mere preparation for an offence.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The sanctions applicable to corruption-related offences are sufficiently dissuasive. Formulation of the sentences is regulated in a detailed manner and there is a range of custodial, pecuniary and administrative sanctions. In determining sentences for offences under the Convention, the court will use its discretion, taking a variety of considerations into account, such as the circumstances of the offence as well as the offender's personal circumstances.

In relation to immunities from prosecution, the members of the national Parliament (Knesset) enjoy such protection regarding "offences within their duty", which does not include corruption-related offences. If the Attorney General determines that the offence was not performed within the MK's duty and decides to prosecute, the concerned MK can invoke his/her immunity by applying to the Knesset, whose decision is subject to judicial review. However, while the personal scope of immunity is fairly limited, certain intrusive investigative measures, such as wiretapping, cannot be undertaken in relation to the investigation of a corruption-related offence, until it is lifted.

Prosecution of criminal cases, including corruption-related offences, lies within the discretion of the State Attorney's Office as representative of the Attorney General, whose decisions in the criminal area are subject to judicial review, by the High Court of Justice.

There is an array of restrictive measures that can be applied in order to ensure the presence of the defendant at criminal proceedings, including detention when there is no less harmful way to prevent the defendant from evading the proceedings.

The minimum eligibility period for early release is considered high enough and should be deemed to take sufficiently into account the gravity of the offences concerned, especially since release is not mandatory after completion of two thirds of the prison term, but subject to other considerations regarding the individual features of the offence and the offender.

Besides criminal sanctions, an official facing charges of corruption is subject to an array of disciplinary measures escalating from warning and reprimand to a range of sanctions, the severest being dismissal and disqualification, temporary or permanent. Disciplinary sanctions can also be imposed by the Civil Service Disciplinary Tribunal.

To encourage cooperation of perpetrators in obtaining evidence against co-perpetrators, a variety of incentives are provided for, ranging from mitigated punishment to immunity from prosecution.

Protection of witnesses and reporting persons (arts. 32 and 33)

The Witness Protection Law applies to anyone who reports corruption offences, as the law is not limited to a specific type of offence. Israel's Witness Protection

Authority has been set up to protect witnesses who are subject to the highest threat levels. It provides a unique protection programme which includes security, management and support, both in Israel and abroad, if needed. The witnesses and their family members are accompanied by the Authority throughout the entire criminal process in order to provide them with the most independent and normal life possible.

The definition of the term "witness" in the above-mentioned law includes victims of the offence. As to the rights of victims in general, the Rights of Victims of Crime Law includes, inter alia, the right to review the indictment, to be informed of the proceedings and express opinions regarding various stages of the proceedings.

A fairly comprehensive protective network is in place in terms of legislation, procedures and structures, dedicated to the protection of reporting persons, both in the private and public sectors. In the framework of the latter, the Office of the State Comptroller cooperates with the Witness Protection Authority to enhance available means of protection.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Seizure and forfeiture provisions are mainly contained in the Criminal Procedure Ordinance (Arrest and Search) and PMLL. Value-based confiscation is possible for certain offences under the PMLL and Dangerous Drugs Ordinance. In addition, Section 22 of the PMLL provides for the confiscation of property in civil proceedings if the person suspected of committing the crime is not present in Israel on a regular basis, if he cannot be located, and therefore an indictment cannot be filed against him, or if the property was discovered after the conviction.

The court may grant a provisional forfeiture order prior to filing an indictment or a request for forfeiture in civil proceedings, if it is satisfied that there are reasonable grounds to assume that the property is likely to disappear or that actions are likely to prevent the subsequent forfeiture of such property. Israeli legislation provides extensive protection to bona fide third parties.

Israel has considered the adoption of measures in accordance with article 31, paragraph 8, through the preparation of a draft bill which was under consultation at the time of review.

Israeli law allows investigative authorities to overcome confidentiality considerations and to obtain the requisite information from banks through a court order as provided in Section 43 of the Criminal Procedure Law.

Statute of limitations; criminal record (arts. 29 and 41)

Israel has established a 10-year statute of limitations for most corruption offences in Section 9 (Prescription of offence) of the Criminal Procedure Law. An investigation of an offence, an indictment or any other court proceeding suspends the statute of limitations for that offence. A court may suspend criminal proceedings if it would be impossible to bring the defendant to trial.

The police receive foreign criminal records and use them for intelligence purposes. For such records to be used as evidence, mutual legal assistance or INTERPOL channels are used. Relevant provisions are also found in Israel's treaties.

Jurisdiction (art. 42)

Israeli legislation establishes jurisdiction over offences committed in whole or in part within the national territory and on board Israeli vessels and airplanes. Jurisdiction also applies to acts of preparation to commit crimes, attempts to commit crimes, attempts to influence or incite crimes, or conspiracy to commit crimes, even when committed outside of Israeli territory, where the intended crime was to have been committed in whole or in part in Israel. Israel can also apply extraterritorial criminal jurisdiction under certain circumstances.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Common law principles of contract rescission and administrative law allow an existing contract or concession to be annulled, rescinded or withdrawn if it was awarded as a result of an act of corruption. This is in addition to tendering procedures, which allow for debarments and disqualifications. Remedies can be awarded to affected claimants, either in the framework of criminal proceedings or following civil suits.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

There are several bodies and authorities with specialized tasks in the area of investigating and prosecuting corruption. Within the Israeli police several fraud units operate, whereas the specialized, highly trained Lahav 433 unit within the IP's Investigation and Intelligence Department incorporates five specialized prosecution and investigative subunits focusing on corruption and international asset recovery.

In the State Attorney's Office, the Criminal Department and the Economic Crimes Department (as well as the District Attorneys and their prosecutors) are responsible for the prosecution of corruption offences.

In the State Comptroller's Office, the Division for Special Functions is responsible for following up on allegations of corruption against public officials. If the findings of the investigation indicate a likelihood of a criminal offence, the case is then referred to the Attorney General.

The different bodies combating corruption are coordinated by an inter-agency Implementation Committee, chaired by the Head of the Criminal Investigations Division of the IP, within a framework of a strong culture of cooperation. The same is evident in regard to cooperation between prosecuting or investigating authorities, on the one hand, and private sector entities, in the other.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The definition of bribery is constructed widely, with a view to avoiding potential loopholes.
- A presumption of fact has developed in Israeli case law stating that when a public official is given a benefit by a person with whom he is in a professional relationship or has an official connection, such benefit would be considered to be given for an act related to his function as a public official.

- The Israeli legislature has introduced, specifically for bribery offences, the option of imposing fines based not only on the benefit obtained, but also on the intended benefit, as an effective deterrent against bribes in high value transactions.
- The existence of Guidelines for State Attorneys on sanctions for bribery offences, providing detailed instructions on the application of relevant penalties depending on gravity of corresponding offences, was positively noted as conducive to the implementation of article 30, paragraph 1.
- The reviewers note the significant number of prosecutions and convictions of Ministers and Members of the Knesset during recent years and consider them as a success and an indication of the overall effectiveness of the system in combating political corruption.
- Asset forfeiture in Israel can be considered as a prime example of successful policy that has been developed from the ground up. There is extensive implementation involving significant assets, as a result, among others, of the effective cooperation of all relevant institutions.
- Israel appears in general to promote and cultivate a strong culture of cooperation among its law enforcement and anti-corruption bodies.
- The Israeli Police, together with the tax and securities authorities, have developed a unique computerized process for the fast, efficient, and secure exchange of information between the police and the financial market.

2.3. Challenges in implementation

While noting that Israel has a robust criminal justice system and is in large part in compliance with the provisions of the Convention against Corruption, the reviewers identified a few challenges in implementation and/or grounds for further improvement (depending on the mandatory or optional nature of the relevant Convention requirements):

- To promote the goals of article 20, Israel could consider giving the State Comptroller, the legal advisor of the Knesset or some other appropriate body or person authority over the asset declarations of Members of the Knesset.
- With respect to articles 23 and 24, it is recommended that Israel finalize the process of the adoption of the amendments to Schedule 2 of the PMLL, lowering the threshold for the price of the "prohibited property" and removing the differentiation between different kinds of such property.
- Consider including all Convention against Corruption offences as predicate offences for the purpose of money-laundering, including in particular Sections 244 (Obstruction of justice), 245 (Subornation in connection with an investigation), and 246 (Subornation of testimony) of the Penal Law.
- Israel is encouraged to proceed with the reform of the regime governing the criminal liability of legal persons, which appears to be conducive to further deterrence and prevention.

- It is recommended to pursue legislation of a bill aimed at including corruption among the offences that allow the use of special investigative techniques such as wiretapping against Members of the Knesset.
- Israel might consider looking more closely into the matter of out-of-court settlements in regards to corruption offences related to securities, in order to ensure adequate predictability by establishing predetermined criteria.
- Israel is encouraged to continue to strengthen measures to raise awareness of public sector reporting and protection mechanisms.
- Israel may wish to consider entering into international agreements or arrangements concerning the potential provision of preferential treatment by the competent authorities of one State to a cooperating person located in another.
- Israel is encouraged to continue strengthening measures with a view to increasing reporting of corruption offences by private persons.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is governed by the Extradition Law, as well as multiple international treaties and conventions. Dual criminality is a condition for extradition, and the law provides for a minimum penalty requirement: an extraditable offence is defined as an offence which, had it been committed in Israel, would be punishable by imprisonment for at least one year. Nonetheless, to the extent that Israel has criminalized the offences covered by the Convention and has enacted penalties for them in excess of one year, Convention offences are extraditable offences under Israeli law.

Israel makes "accessory offences" extraditable, if the main offence satisfies the extradition requirements. As regards "political offences", a Convention-based offence would not be treated as such, in case the Convention were used as a basis for extradition.

Israel indicated that it partially considers this Convention as the legal basis for extradition in respect of corruption-related offences. With respect to States parties with which it does not have an extradition treaty, it has declared that it shall consider each request for extradition for an offence under the Convention with due seriousness and may elect to extradite in such cases pursuant to a special ad hoc agreement with the State party, upon a basis of reciprocity.

There are a number of provisions designed to enable the use of expedited extradition procedures, at the wanted person's option, in appropriate cases. The more time-consuming factor in extradition procedures is the preparation of materials related to the prima facie evidence that must be demonstrated under Section 9(a) of the Extradition Law.

Section 5 of the Extradition Law provides that where a petition for extradition has been submitted, the Jerusalem District Court may order the detention of the wanted

person. The Extradition Law also permits provisional arrest of a wanted person in cases of urgency even before an extradition request is formally received.

Israel can extradite its nationals to another country to stand trial with respect to all extradition offences, including corruption offences. However, if the wanted person was both an Israeli citizen and resident at the time he allegedly committed the crime, he will be extradited only on condition that he be given the option of serving in Israel any sentence of imprisonment imposed upon him in the requesting State.

The individual rights of persons wanted for extradition are protected both with respect to the procedural aspects of their extradition and the substantive circumstances under which they may be extradited.

A requested person shall not be extradited if there are grounds to suspect, among others, that the request for extradition was submitted for reasons of racial or religious discrimination against the wanted person; if it was submitted to prosecute or punish the wanted person for an offence of a political character; and if the wanted person would be extradited to a legal system which would not protect his or her basic human rights. Extradition requests will not be refused for criminal offences on the ground that the offence is also considered to involve fiscal matters.

The transfer of sentenced prisoners is regulated in Israel's Serving of a Prison Sentence in the Country of the Prisoners Nationality Law. The transfer can be either based on a convention or an ad hoc agreement. The transfer of criminal proceedings to another jurisdiction is also possible, as a matter of police or prosecutorial discretion.

Mutual legal assistance (art. 46)

The International Legal Assistance Law allows Israel to offer full and effective cooperation to authorities in foreign States. All listed forms of assistance under this Convention may be provided or requested with respect to criminal matters, including measures concerning the identification, tracing and freezing of proceeds of crime and the recovery of assets. There are no restrictions regarding legal persons.

The existence of a treaty is not a prerequisite to provide mutual legal assistance (MLA). However, Israel has entered into MLA treaties with a large number of States and has acceded to numerous relevant conventions. The spontaneous transmission of information to competent authorities of other States is an inherent part of informal law enforcement cooperation.

Dual criminality is not per se a requirement for MLA, with the exception of assistance concerning freezing, seizure and confiscation of assets. Israeli law also takes into account *de minimis* considerations.

The Department of International Affairs of the Office of the State Attorney is the Central Authority for purposes of assistance requests submitted under the Convention. It is expected that requests will be submitted in writing. Urgent requests for MLA may be transmitted by fax. Requests must be submitted either in Hebrew or English.

A request for assistance will be performed in the manner in which an act of that kind is performed in Israel. Assistance shall be performed in the particular manner

requested so long as this does not violate Israeli law. The rule is that Israel will preserve the confidentiality of MLA requests. Videoconference hearings, both in Israeli cases and on behalf of foreign authorities, are possible and have become increasingly common.

MLA requests will not be denied simply on general grounds of bank secrecy. There are a number of discretionary bases upon which the Minister of Justice is permitted to refuse assistance. Israel would not refuse a request relating to a Convention offence simply because it involved fiscal elements. Assistance may be postponed if it would interfere with an ongoing domestic criminal proceeding. Israel will, through dialogue with requesting States, seek to resolve issues that could prevent the execution of requests for assistance, and in the rare cases where a request is denied, a letter is sent to the requesting State informing it of the reasons.

Israel will generally assume the ordinary expenses of executing MLA requests. Certain expenses, such as expert witness expenses, may be recognized as exceptions which are borne by the requesting State.

Publically available records, documents and information are routinely provided. Non-publically available information held by a public authority may be provided if the information is of the kind that may, under Israeli law, be transmitted to another public authority in Israel.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Israel has a modern and comprehensive regime for law enforcement cooperation. The Ministry of Public Security has signed several bilateral agreements on cooperation in the fight against crime, and there are also other bilateral agreements and multilateral conventions providing bases for cooperation between Israeli and other law enforcement authorities. Requests are often received via informal and INTERPOL channels.

This Convention may be considered as the basis for mutual law enforcement cooperation, although Israel does not require the existence of a treaty. Any form of assistance requested may be performed to the same extent and subject to the same safeguards as those that apply had the crime occurred in Israel. There are contact points nominated to facilitate cooperation and the Israel Police has a number of representatives stationed in diplomatic missions abroad.

Joint investigations are possible under existing legislation, international conventions or bilateral agreements. Sometimes a protocol is signed between the parties for the purpose of a specific investigation. However, there have not been instances of joint investigations in corruption matters.

Israel does not require specific agreements to carry out special investigative techniques. At the same time, Israel is party to several agreements that provide for techniques such as controlled delivery. Wiretapping will be also permitted under certain circumstances.

3.2. Successes and good practices

Israel has established a comprehensive and coherent legal framework on international cooperation in criminal matters. In this context, the following

successes and good practices in implementing Chapter IV of the Convention are highlighted:

- The Ministry of Justice (Office of the State Attorney) has recently issued guidelines on the consideration of requests for MLA concerning seizure and confiscation. The application of these guidelines is expected to make international cooperation more effective.
- Israel is a provider of technical assistance in the form of expert knowledge to foreign law enforcement authorities, for example through the exchange of intelligence and legal information by the Israeli police and the FIU with international counterparts.

3.3. Challenges in implementation

The following points are brought to the attention of the Israeli authorities for their action or consideration (depending on the mandatory or optional nature of the relevant Convention requirements) with a view to enhancing international cooperation to combat offences covered by the Convention:

- It is recommended that Israel adapt its information system to allow it to collect data on the type of MLA and extradition requests, the time frame for providing responses to these requests, and the response provided, including any grounds for refusal.
- Israel is encouraged to actively promote a policy of acceding to or concluding new bilateral and multilateral agreements or arrangements to carry out or enhance the effectiveness of extradition.
- Israel may wish to consider adopting more specific guidelines or regulations with regard to the procedure of transferring criminal proceedings among States parties.